

**REMARKS UNDER 37 CFR § 1.111**

**Formal Matters**

Claims 1-2, 11, 13-30 and 44-45 are pending after entry of the amendments set forth herein.

Claims 2, 16-19, 21 and 23-30 are currently withdrawn from consideration.

Claims 1, 11, 13-15, 20, 22 and 44-45 were examined. Claims 1, 11, 13-15, 20, 22 and 44-45 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

**The Office Action**

**Claim Rejected Under 35 U.S.C. Section 112, Second Paragraph**

In the Official Action of October 12, 2007, claim 22 was rejected under 35 U.S.C. Section 112, second paragraph as being indefinite. In response thereto, Applicants have amended claim 22 above to change "screw-type" to -screw--.

In view of the above amendment and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claim 22 under 35 U.S.C. Section 112, second paragraph, as being no longer inappropriate.

**Claims Rejected Under 35 U.S.C. Section 102(b) (Nicholas et al.)**

Claims 1 and 44 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Nicholas et al., U.S. Patent No. 5,967,974. The Examiner asserted that Nicholas et al. discloses an access system with upper and lower spreader portions 126, 112, the spreader portions being positioned relative to each other, the upper spreader portion comprising a hook 132 mounted to a retraction mechanism actuator via a swivel 128, wherein the lower portion comprises a flat depressor surface.

Applicants respectfully traverse. It is respectfully submitted that reference numeral 128 of

Nicholas et al. discloses an adjustment knob (see column 4, line 44), not a swivel. The Examiner asserted that the hook 132 is mounted to a retraction mechanism via knob 128, which the Examiner interpreted to be a swivel. However, knob 128 is not fastened to hook 126. Knob 128 extends from post member 128c that becomes seated in a valley 126a formed by gaps between teeth 126b. The position of the hook 126 can be adjusted by placing the post member 128c into a different valley 126a, but the hook is fixed in that position and does not swivel.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1 and 44 under 35 U.S.C. Section 102(b) as being anticipated by Nicholas et al., U.S. Patent No. 5,967,974, as being clearly inappropriate.

**Claims Rejected Under 35 U.S.C. Section 102(b) (Phillips)**

Claims 11, 13, 20 and 45 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Phillips, U.S. Patent No. 4,865,019. The Examiner asserted that Phillips discloses an access system with upper and lower spreader portions 12, 13, the spreader portions being positioned relative to each other, the upper spreader portion comprising a pair of hooks 48 mounted to a retraction mechanism actuator via a swivel (loop 47), wherein the lower portion comprises a flat depressor surface.

Applicants respectfully traverse. It is respectfully submitted that reference numeral 12 discloses teeth on an edge of an elongated member 11 that function as part of a rack and pinion drive for the retractor of Phillips, not an upper or lower spreader portion.

It is further respectfully submitted that the loop 47 of Phillips is not a swivel as that term is understood by those of ordinary skill in the art.

Further, claim 11 has been amended above to recite that said depressor surface underlies said pair of hooks, and that a free end portion of said depressor surface extends substantially in the same direction as the free ends of the pair of hooks. Support for this amendment can be found, for example in Fig. 2 and the description thereof.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 11, 13, 20 and 45 under 35 U.S.C. Section 102(b) as being anticipated by Phillips, U.S. Patent No. 4,865,019, as being clearly inappropriate.

**Claims Rejected Under 35 U.S.C. Section 103(a) (Nicholas et al. in view of Phillips)**

Claims 11, 13-15 and 22 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Nicholas et al., U.S. Patent No. 5,967,974, in view of Phillips, U.S. Patent No. 4,865,019. The Examiner admitted that the system of Nicholas does not include a pair of hooks on the upper section, but asserted that it would have been obvious to provide the upper spreader portion of Nicholas et al. is configured to provide a minimally invasive opening (see col. 1, lines 59-65) by spreading the ribs. Accordingly, it is respectfully submitted that it would not have been obvious to add an additional hook to the system of Nicholas et al., as the spreading taught by Phillips is with regard to soft tissues across a larger incision, and such spreading would not be a concern with spreading ribs to create a small minimally invasive window opening, and would likely only increase the size of the system and make it more cumbersome and perhaps less effective.

However, even if it would have been obvious to combine the references as suggested by the Examiner, which, for at least the above reasons, Applicants submit that it would not have been obvious, the resulting combination would still not meet all of the recitations of the rejected claims. As noted above, claim 11 has been amended above to recite that said depressor surface underlies said pair of hooks, and that a free end portion of said depressor surface extends substantially in the same direction as the free ends of the pair of hooks. It is respectfully submitted that neither Nicholas et al. nor Phillips discloses, teaches or suggests these features.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 11, 13-15 and 22 under 35 U.S.C. Section 103(a) as being unpatentable over Nicholas et al., U.S. Patent No. 5,967,974, in view of Phillips, U.S. Patent No. 4,865,019, as being inappropriate.

**Conclusion**

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-036.

Respectfully submitted,  
LAW OFFICE OF ALAN W. CANNON

Date: \_\_\_\_\_

11/14/08

By: \_\_\_\_\_



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